News Release

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Labor Department Sues Fiduciaries of Illinois 401(k) and Medical Plans Over Delinquent Employee Contributions

CHICAGO, Ill. – The U. S. Department of Labor sued the fiduciaries of the 401(k) and medical plans of Gen Fire, Inc. of Northbrook, Ill. on July 2 for failure to deposit with the plans contributions deducted from employees' paychecks. The assets were retained with those of the company.

"The hard-working employees of Gen Fire set these funds aside so they'd have a secure retirement, but their company's executives violated that trust and did not deposit the funds in their retirement accounts," said Secretary of Labor Elaine L. Chao. "This department will not tolerate this kind of corporate abuse and mismanagement, and our case sends a clear message the federal government will aggressively enforce the law to protect workers' benefits."

The suit alleges that fiduciaries Richard Huthsing and C. Keet Huthsing, the vice president and president of the company, respectively, violated the Employee Retirement Income Security Act by failing to forward employee contributions to the 401(k) plan, to forward employee health premiums to the medical plan carrier, and to obtain a fidelity bond covering the assets of the 401(k) plan as required by law.

The suit alleges that the defendants failed to collect delinquent contributions owed to the plans at various times starting in April 14, 2000, to Sept. 29, 2000. The department's suit seeks to require the defendants to reimburse the plans for all losses with interest, undo any transactions with the plans that are prohibited under the law, appoint an independent fiduciary to manage the plans, and permanently bar the defendants from serving as fiduciaries to any plans governed by ERISA.

Gen Fire was a manufacturer of fire extinguishers and fire protection materials, and filed for protection under Chapter 11 of the bankruptcy code on Oct. 5, 2000. On Jan. 22, 2001, the case was converted to a Chapter 7 bankruptcy. The company sponsored the 401(k) and medical plans for as many as 120 employees. Cumulatively, the plans had $125,000 in assets as of Sept. 30, 2000.

Kenneth Bazar, director of the department's Chicago office of the Employee Benefits Security Administration (EBSA);, noted that employers with similar problems, who are not yet the subject of an investigation by EBSA, may be eligible to participate in the department's Voluntary Fiduciary Correction Program (VFCP). Participation in the VFCP requires employers to make workers whole but allows them to avoid EBSA enforcement actions and civil penalties as well as any applicable excise taxes. For more information about the VFCP, see www.dol.gov/ebsa .

Employers and workers can reach EBSA's Chicago Regional Office at (3l2) 353-0900 or through its toll-free number, 1-866-444-EBSA (3272) for help with problems relating to private-section pension and health plans.

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(Chao v. Huthsing) Civil Action No. 03C-4617